

Introduced by Senator Harman

February 10, 2011

An act to amend Section 3010 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

SB 261, as introduced, Harman. Child custody: deceased parent.

Existing law provides that the mother of an unemancipated minor child and the father, if presumed to be the father, as specified, are equally entitled to the custody of the child, and that if one parent is dead, unable or refuses to take custody, or has abandoned the child, the other parent is entitled to custody. Existing law permits a court, during the pendency of a custody proceeding or any time thereafter, to make an order for the custody of a child during minority that seems necessary or proper.

This bill would specify that a court, in the event of the death of a parent, retains jurisdiction to make any orders required to effect the right of a parent to custody, as described above, and would prescribe notice requirements in this regard.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3010 of the Family Code is amended to
- 2 read:
- 3 3010. (a) The mother of an unemancipated minor child and
- 4 the father, if presumed to be the father under Section 7611, are
- 5 equally entitled to the custody of the child.

1 (b) If one parent is dead, is unable or refuses to take custody,
2 or has abandoned the child, the other parent is entitled to custody
3 of the child.

4 (c) *In the event of the death of a parent, the court retains*
5 *jurisdiction to make any orders required in an existing case to*
6 *effect the rights provided under subdivision (b). Notice of the*
7 *application for any orders under this subdivision shall be served*
8 *at least 15 days prior to the hearing as follows:*

9 (1) *As provided in subdivision (b) of Section 1511 of the Probate*
10 *Code, on the persons designated in that subdivision and on any*
11 *other person maintaining the care of the child.*

12 (2) *On the relatives within the second degree of the child, except*
13 *those served pursuant to paragraph (1), in the manner provided*
14 *in subdivision (c) of Section 1511 of the Probate Code.*